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Monterey County Pesticide Regulatory Program 2007/2008 Performance Evaluation Report

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Performance Evaluation of the Monterey County Agricultural Commissioner Pesticide Use Enforcement Program

This report provides an evaluation of Monterey County Agricultural Commissioner's (CAC's) pesticide use enforcement (PUE) program for the fiscal year 2007/08. The assessment evaluates the performance of goals identified in the CAC's enforcement work plan as well as the program's adherence to Department of Pesticide Regulation (DPR) standards as described in the Pesticide Use Enforcement Program Standards Compendium.

I. Summary Report of Core Program Elements

Throughout 2007/08, the following core areas of the Monterey County pesticide enforcement program were evaluated: restricted materials permitting, compliance monitoring, and enforcement response. The report findings are based on field observations, oversight inspections, review of county records, and an evaluation of illness and complaint investigations for the fiscal year 2007/08.

A) Restricted Materials Permitting

The restricted materials permitting program meets DPR standards and work plan goals.

B) Compliance Monitoring

The compliance monitoring program meets DPR standards and work plan goals.

C) Enforcement Response

The enforcement response program meets DPR standards and work plan goals.

Summary Statement

No deficiencies were identified in the Monterey County Agricultural Commissioner's pesticide use program and the program is currently effective.

II. Assessment of Core Program Effectiveness and Work Plan Goals

A) Restricted Materials Permitting

Permit Issuance

Monterey County Agricultural Commissioner staff who issue restricted materials permits are knowledgeable of pesticide laws and regulations. All Monterey County pesticide use enforcement staff possesses certificates/licenses in pesticide regulation and investigation and environmental monitoring or are under supervision of the pesticide use enforcement deputy or the use enforcement chief deputy. The more experienced Monterey staff oversees those staff who have less experience with restricted materials permit issuance. During permit issuance, CAC staff use their knowledge of local conditions, pest pressures, permit conditions, restricted use pesticides when considering appropriate mitigation.

A grower letter and work sheet are sent to the restricted materials permit applicant prior to issuing the permit. The applicant makes any changes to the work sheet and submits the

worksheet to the Monterey CAC. The permit worksheet is assigned to a biologist; the biologist will use a restricted materials permit and environmental impact report checklists to ensure permit requirements are met at permit issuance. Monterey conducts oral interviews with the applicant to determine if the applicant is property operator. Site maps are reviewed and continuing education credits are confirmed for private applicator certificate (PAC) holders. If the applicant possesses a PAC or a qualified applicator license or qualified applicator certificate, Monterey verifies and lists the license number on the permit. If the applicant is not the property operator, a letter of authorization is required to be in possession of the permit applicant prior to the issuance of the permit. When the permit is completed, Monterey County notifies the applicant and makes an appointment to issue the permit.

Monterey County uses the Restricted Materials Management System (RMMS) to issue permits. Permits are amended by using a permit supplemental form in person or by fax. The supplement may be faxed to the permit applicant for the applicant's signature and returned to the CAC. The supplemental page is attached to the original permit.

Prior to approving a restricted material, Monterey CAC staff confirm the pesticide is registered for use on the commodity using DPR's pesticide label database. Biologist issuing the restricted materials permit will also review any permit condition that may apply to the restricted use pesticide, and will add the condition to the site. Maps submitted by the permit applicant during permit issuance are reviewed by the Biologist to ensure sensitive sites are identified on the maps. Sensitive sites include but are not limited to labor camps, residential areas, roadways, schools, waterways and other sites designated by the commissioner.

The majority of permits issued by the Monterey CAC are for a one-year period. For 2007/08, Monterey County issued just over 800 restricted materials permits, approximately 150 operator IDs, and nearly 50 non-agricultural permits. Monterey County managers and supervisors provide annual training on the policies and procedures used to issue permits and Operator IDs. There was approximately a 15% reduction in the number of permits issued in 2007/08; there were also four permit denials

The DPR evaluation determined that permits are:

- Issued only to qualified applicants
- Signed by authorized persons
- Issued for a time period allowed
- Permit amendments follow approved procedures

Site Evaluation

Notices of Intent (NOIs) are received by fax in the Salinas (Main) office, also in the two branch offices in King City and Pajaro. There are drop boxes at each of the offices. The main office is open from 8 am to noon and from 1:00 pm till 5:00 pm; branch offices are open for a limited time in the morning and afternoon each day. Monterey CAC staff reviews NOIs received by fax or drop box. Licensed pesticide enforcement staff reviews the NOI against the permit. NOIs are submitted at least 24-hours prior to the start of the application. A request to waive the 24-hour NOI may be granted on a case-by-case basis. Each Biologist in the field has a cell phone and is contacted to conduct a pre-site inspection if the location of NOI is near a sensitive site. Sensitive sites include, but are not limited to parks, residential areas, schools, hospitals, labor camps and

other crops. Biologists have the authority to accept or deny notice of intents and will give notice to the operator of the property and the pest control business when the notice of intent is denied.

Notices of intent for restricted materials to be applied near sensitive sites are evaluated and denied if the site does not meet the condition(s) of the permit or any label restriction. The application may be denied, conditioned, or made using an alternative pesticide. When NOIs are denied, the property operator, and when appropriate, the pest control business, are notified and a denial form is completed.

More than 19,000 NOIs were received in 2007/08 and nearly 1,200 pre-site application evaluations were conducted. Monterey County denied four NOIs during 2007/08.

DPR's evaluation found that NOIs:

- Contained the necessary information
- Identified treatment areas and sensitive areas that could be adversely impacted by the permitted uses
- Identified mitigation measures and included conditions that addressed known hazards

The CAC staff adequately evaluated permits and determined if the use of feasible alternatives was required. CAC staff reviews all NOIs in a timely manner and adequately monitored agricultural and non-agricultural permits utilizing pre-application site evaluations and use monitoring inspections.

Since March 2007, Monterey CAC pesticide enforcement staff, including the commissioner, spent an enormous amount of time working on a controversial soil fumigant permit appeal. DPR's Director upheld the permit, and after two temporary restraining orders followed by failed attempts in Superior Court to obtain preliminary injunctions, the fumigations were allowed to proceed. The time and other resources spent on this incident did not stop after the fumigations were completed as the appellants' complaint is still under judicial review.

C) Compliance Monitoring

Inspections

Monterey County's pesticide enforcement staff who conduct inspections and investigations possesses certificates/licenses in Pesticide Regulation and Investigation and Environmental Monitoring. Monterey CAC staffs who do not possess certificates/licenses are supervised by the deputy or chief deputy responsible for the pesticide enforcement program. Over the last two fiscal years, the Monterey CAC has had a high turnover of licensed staff; nine biologists have left the Monterey CAC office to pursue other opportunities. During 2007/08, the Monterey CAC was able to hire ten new Biologists. Staff assigned to the King City and Pajaro branch offices are responsible for all CAC programs including pesticide enforcement duties.

The Monterey CAC increased their field presence and performed more inspections with private applicators and employees of private applicators than in previous years. Monterey County was able to increase the number of use monitoring inspections by approximately 33%. The number of field worker inspections increased by approximately 25%. The number of non-compliances found during 2007/08 increased. Monterey County also dedicated many pesticide enforcement

hours to issuing the permit, and inspecting the aerial pheromone applications from the light brown apple moth (LBAM) eradication project. There were also 265 hours dedicated to public information requests related to this project.

Monterey County Agricultural Commissioner's staff attended training sessions that included investigation procedures, respiratory protection, and the Monterey CAC chief deputy has a series of training modules for pesticide enforcement staff.

When a biologist conducts pesticide use-monitoring inspections and non-compliance(s) are found, the biologist will contact the supervisor or employer of the employee to explain the non-compliance(s). Non-compliance are corrected at the site. In addition, Monterey County conducts a follow-up inspection or an employee/headquarters record inspection to ensure the non-compliance is corrected.

The biologist prepares notice of violations, decision reports, and notices of proposed action that are reviewed by the deputy and/or the chief deputy. In 2007/08, Monterey County wrote 38 decision reports, all of which were accepted by DPR.

Inspections performed by the CAC were found to:

- Adequately address label, law and regulatory requirements
- Include interviews of employers and employees
- Adequately document violations
- Include appropriate follow-up inspections and procedures

Investigations

Monterey County Agricultural Commissioner staff who conduct pesticide enforcement investigations have attended pesticide episode investigation training. The CAC receives complaints in the branch offices, main office, or from other agencies or groups. The complaint or illness investigation is distributed and assigned to the district where the incident occurred. Incidents or complaints involving pesticides are investigated and a written report is completed for each investigation.

In 2007/08, Monterey County worked on four priority investigations. Two of the priorities were public exposure episodes involving large numbers of people which required a tremendous amount of staff time canvassing neighborhoods and conducting numerous resident interviews in Spanish and English.

Early in the fiscal year, Monterey County had some difficulty keeping track of investigation timelines; however, they have since implemented an illness and investigation tracking system. All complaints, illnesses and investigations are logged into a spreadsheet at the Salinas office before being assigned to a biologist to follow up. The biologist assigned to maintain the log gives weekly updates to the pesticide program deputy, who follows up with the investigators to ensure that investigations are completed in a timely manner.

C) Enforcement Response

All inspections and investigations where non-compliances are found, or a notice of violations has been written, are entered into the CAC's violation/warning compliance history database. Each biologist who finds a violation will review the database for the violator's compliance history. The biologists are required to conduct follow-up inspections, which may include a headquarter employer/employee inspection when worker safety non-compliances are found. The biologist follows the enforcement response regulations and classifies the non-compliance. Once the non-compliance is classified, the biologist prepares a decision report or a notice of proposed action that will be review and finalized by CAC management at their weekly meeting. Enforcement actions are taken when causative violations are found in incidents involving drift, pesticide related illnesses, or when required by the enforcement response regulation.

During 2007/2008, Monterey County issued 17 notices of proposed action that resulted in one administrative hearing. The county collected over \$9,000 in pesticide enforcement civil penalties.

The CAC's enforcement program was found to:

- Initiate the appropriate action when violations are identified
- Sufficiently support compliance, enforcement and public protection actions

The CAC levies fines in the appropriate category, adheres to statutory time frames and follows DPR policies when imposing civil penalties.

III. Recommended Corrective Actions

No corrective actions are currently needed.

IV. Non-Core and Desirable Activities

Outreach and Training

The Monterey County Agricultural Commissioner's office provides continuing education (CE) classes in English and in Spanish for private applicators in all of their offices. In May 2007 and March 2008, Monterey CAC cooperated with Poder Popular, a community outreach group to provide information in Spanish to residents in Greenfield and Gonzales on non-occupational medical reimbursement, hazard materials response, health and safety, and pesticide use in the home.

The commissioner, managers, and biologists have provided presentations for California Agricultural Aircraft Association (CAAA), California Agricultural Pest Control Advisors (CAPCA), and Pesticide Applicators Professional Association (PAPA). Monterey County has also provided outreach to the Strawberry Commission, the floricultural industry, and the pest control industry including Western Farm Service and Green Valley, two agricultural pesticide dealerships. They provided fumigation regulatory updates to the Central Coast Vineyard Association. The county also organized the Monterey County Ag Expo Seminar, which is an annual event providing regulatory updates to the regulated Hispanic community. This Ag Expo puts vendors and the regulated community together at one event.